



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201121032**

Release Date: 5/27/2011

Date: 3/1/2011

UIL code: 501.00-00

501.03-00

501.03-05

501.32-00

501.33-00

503.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 12/15/2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = President/Rabbi
C = Secretary
D = Treasurer
E = Name of Individual
G = Facility of Congregation
H = Property location/Rabbi residence.
V = Name of Congregation
W = School
X = Date of Incorporation
M = Name of County

UIL Numbers:

501.00-00
501.03-00
501.03-05
501.32-00
501.33-00
503.00-00

Dear

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Issues

- 1) Does your lack of adequate and detailed responses to our inquiries preclude you from qualifying for exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
- 2) Do your inadequate responses cause you to fail the operational test, therefore disqualifying you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.

- 3) Does the transfer of a personal liability by one of your officers for the benefit of that officer constitute prohibited inurement of income under section 501(c)(3) of the Code?
Yes, for the reasons described below.

Alternative Issue

If, upon appeal, exemption is granted, would you qualify as a synagogue under section 501(c)(3) of the Code as an organization described in Sections 509(a)(1) and 170(b)(1)(A)(i)?
No, for the reasons described below.

Facts

You were formed by Articles of Incorporation filed with M's office on the date X by individuals B, C, and D who are also your President, Secretary and Treasurer respectively. These Articles stated that your services will be held at address H. The purposes of your corporation, in part, were listed as follows:

- a. To promote the principles of the Jewish religion and Judaism.
- b. To establish and maintain a synagogue and place of Jewish worship, as well as a place of study of the laws and books of the Jewish faith.
- c. To raise funds in order to distribute charity to the poor and needy.
- d. To strengthen the religious, moral and intellectual welfare of your members and their families.
- e. To buy, sell, hold, own, rent, lease, mortgage, convey, exchange, alter, improve and develop real property and other property necessary to carry out the purposes and object of this Corporation, as permitted by the Religious Corporations Law.

Your Bylaws were very brief. They stated your name and that your purpose is to provide a place of worship and a study hall for Torah studies. The entire remainder of the document states:

According to the orthodox Jewish religion, one is forbidden to ride in a motor vehicle on the Sabbath. Therefore, it is customary to have small synagogues in the orthodox neighborhoods for those who cannot walk the distance to the large community synagogues. Our synagogue is a small congregation established for the benefit of the immediate neighborhood.

Our congregation has one class of membership which consists of attending services on a regular basis. Members are allowed to vote for officers at the annual meeting. Meetings are held the last day of August of each year. At this meeting officers are elected by the vote of members of the congregation.

The duties of the officers are administrative. They solicit the contributions and disburse them according to the needs of the congregation. The Rabbi of the synagogues exercises his rabbinical authority to insure that all administrative decisions adhere to the orthodox Jewish law and Tradition.

If necessary, officers will amend the certificate of incorporation. These bylaws were signed by individuals B and C.

The initial proposed budgets that you submitted included all of your expenses as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Meeting and Lectures		\$	\$
Cleaning & Maintenance Supplies		\$	\$
Supplies		\$	\$
Organization Fee	\$		

You have requested classification as a synagogue under Section 509(a)(1) and 170(b)(1)(A)(i). Accordingly, you submitted a Form 1023 with a Schedule A for churches. As a part of this schedule, you indicated that you had an average of 15 attendees at your services and 15 members. You responded "No" to the following inquiries on Schedule A:

- a. Do you have a formal code of doctrine and discipline?
- b. Do you own the property where you have an established place of worship?
- c. Do you have a process by which an individual becomes a member?
- d. May your members be associated with another denomination or church?
- e. Are all of your members a part of the same family?
- f. Do you conduct baptisms, weddings, funerals, etc.?
- g. Do you have a school for the religious instruction of the young?
- h. Do you have schools for the preparation of your ordained ministers or religious leaders?
- i. Is your minister or religious leader also one of your officers, directors, or trustees?
- j. Do you ordain, commission, or license ministers or religious leaders?
- k. Are you part of a group of churches with similar beliefs and structures?
- l. Do you issue church charters?
- m. Do you pay a fee for a church charter?
- n. Do you have other information you believe should be considered regarding your status as a church?

The narrative description of your activities, as included with your original Form 1023, in its entirety, states that your purposes "are to provide a House of Worship for prayer services and Torah study to residents of the community."

Your application includes the following governing body members:

Individual B – President
Individual C – Secretary

Individual D – Treasurer

We asked for additional information regarding your activities and facility. You indicated that you had relocated to facility G. You provided a statement signed by individual E, on behalf of congregation V which you stated is the owner of the facility. It is noteworthy that individual E has the same surname as individual C. W's address is also the same as V's. The statement, in its entirety, is as follows:

"We have the honor to accept you and your kollel members to participate in all prayers and studies at facility G."

Later in the development of your application, we asked about the implication of the statement made by congregation V that you do not conduct your own activities, but that you join with them for worship. You responded that "at present, we do not conduct our own worship activities. However, it is customary in the religious orthodox community to have individuals who study religious studies all day, to participate in worship activities."

We asked for you to identify your Rabbi, or other religious leader. You said that individual B is your Rabbi. We asked for a copy of B's ordination certificate. Rather than submitting a certificate, you submitted a statement from organization W. The statement said that "this is to confirm that B attended organization W an institute for advanced study of Jewish law from August 1976 through December 1980. He obtained the ordination of Rabbi." Organization W's letterhead indicated that they were located at facility G.

Approximately one year after you were established, we asked if your congregation had increased and you responded "No!" You said that you attract new members through "word of mouth." You indicated that you do not, at this time, have any women members. The photographs of the facility that you use show a very large building. There was no signage that we could see in the photographs to indicate that you were conducting services in that building.

We asked for you to either provide a congregational directory, or a listing of your members, including name and address. You responded, "No!" We asked why you did not provide this information and you responded, "enclosed, please find a list of members." Again, this information was omitted from your response. We then asked for you to comment on this omission and you finally submitted a listing of names with no addresses. This listing included three pairs of individuals with the same surname. We had previously asked if any of your members were related by family or business relations and you responded, "No!" Also, Rabbi B was notably absent from this listing.

We asked if B was otherwise employed and you replied, "No!" We asked how you differentiate between synagogue expenses and personal expenses of the officers, directors, trustees and members. You responded that you do not pay personal expenses for these individuals. We asked if the living expenses of the Rabbi are paid by the synagogue, how the amounts were determined, and by whom. You said that "only expenses that are paid by the synagogue for the benefit of the Rabbi are for parsonage housing expenses. These amounts would be determined based on the amounts listed on the mortgage bill, real estate tax bill, etc. There are no benefits paid for members, trustees, directors, or officers."

Public record showed that not only did B transfer his home to you, but that transfer was subject to existing mortgage on the property. The liabilities transferred to you totaled the principal amount of \$. We asked why you assumed the mortgage, how this transfer came about and for board meeting minutes to document this decision. To these questions you responded simply that "the agreement to transfer the property was based on assuming the existing mortgage." We asked for you to explain the purpose of holding the property and you said that the main use is to "provide a residence for our Rabbi and his family. There is also a study at this location for the study use of our Rabbi, and for consultations with members of our organizations."

We asked for photographs of the facility you own. You indicated that the photographs were enclosed, but they were omitted.

We asked for you to provide the minutes for all of your board meetings and you said that you "do not have any." We requested resumes for each of the board members and for you to describe the activities conducted by each of the individuals on your behalf. You said that "there are no formal resumes for members of our board. However, they are all graduates of Rabbinical College and are respected members of the community."

Further, we asked for you to describe the monetary and non-monetary contributions the members, directors, trustees, and officers make to you. You responded, "N/A." We requested copies of all of your bank and investment statements since your inception. You said that "at present, we do not have any bank or investment statements." However, you attached bank statements with your response. We asked about this discrepancy and you responded that "there was an error when we erroneously stated that we have no bank statements."

The bank statements included payments to a credit card. You indicated that the purpose of these disbursements were to pay for the travel expenses of the Rabbi. "These expenses are necessary, since he is a kosher rabbinical supervisor." We asked for documentation of these expenses and you were not able to provide same. We asked for a listing of individuals that are authorized to sign checks from your bank account. You responded that Rabbi B is the only individual with this authority.

There were also numerous payments made to individuals from your bank account. We asked about a few of these and you responded that one of these was a loan (no further information provided) and two of them were for repairs done to facility H.

We asked for a list of disbursements you had made to other organizations since your inception, including the Employer Identification Number ("EIN") and the purpose. You provided a listing of 42 disbursements, including numerous distributions to congregations V and W . You omitted the EIN numbers. The stated purpose that you provided for 40 of these distributions was "for religious ed." and the other 2 were "for charity."

Law

Section 501(a) exempts organizations described in Section 501(c) of the Code from federal income taxation.

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals as defined in Section 1.501(a)-1(c).

Section 1.501(a)-1(c) of the regulations provides that the terms "private shareholder or individual" in Section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities in not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit private interests such as "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." It must not be operated for the benefit of designated individuals or the person who created it.

In Rev. Rul. 78-232, 1978-1 C.B. 69 (1978), the taxpayer, claiming to be a duly ordained minister, formed a "church." The original members of the church consisted of the taxpayer, the taxpayer's spouse and two minor children, and a few family friends. The taxpayer was employed full-time by a state government, and continued in this employment after the church was formed. The taxpayer's salary checks were received by the taxpayer and deposited into the church's bank account. The funds from the church bank account, however, were primarily used to furnish the taxpayer with lodging, food, clothing, and other living expenses in a manner comparable to that which the taxpayer previously enjoyed.

Rev. Rul. 81-94, 1981-1 C.B. 330 (1981) held that a church that was formed by a professional nurse (who is also the "church's" minister, director, and principal officer) and that was used primarily as a vehicle for handling the nurse's personal financial transactions was not exempt from tax under section 501 (c) (3) of the Code. Pursuant to a vow of poverty, the nurse transferred all of the nurse's assets, including the nurse's house and automobile, to the corporation. All salary payments received from the third-party employer were deposited in a bank account maintained in the name of the corporation. In return, all of the nurse's existing liabilities, such as a home mortgage and all outstanding credit card balances, were assumed by the corporation. The nurse was also provided with a full living allowance sufficient to maintain or

improve the nurse's previous standard of living. The corporation permitted the nurse to use the house and automobile for personal purposes.

Revenue Procedure 2010-10, superseding Revenue Procedure 90-27, 1990-1 C.B. 514, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.03 provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

In American Guidance Foundation v. U.S., 490 F. Supp. 304 (D.D.C. 1980), the court said that, at a minimum, a church must include a body of believers that assemble regularly in order to worship. It must also be reasonably available to the public in the conduct of worship, in its educational instruction, and in its promulgation of doctrine. An organization of a few family members who attend worship services at a relative's apartment was held not to be a church under sections 509(a)(1) and 170(b)(1)(A)(i) because it did not meet these requirements. In addition, it was held that when the assets of an organization are used to pay for the living expenses of an individual(s) denial of exemption is appropriate. Generally, there are fourteen criteria used in determining whether or not an organization qualifies as a church. These criteria are as follows:

- a. A distinct legal existence
- b. A recognized creed and form of worship
- c. A definite and distinct ecclesiastical government
- d. A formal code of doctrine and discipline
- e. A distinct religious history
- f. A membership not associated with any other church or denomination
- g. Ordained ministers ministering to its congregation
- h. Ordained ministers selected after completing prescribed studies
- i. Literature of its own
- j. Established place of worship
- k. Regular congregation
- l. Regular religious services
- m. Sunday schools for religious instruction of the young
- n. Schools for the preparation of ministers

The court stated in cases where church status has been litigated certain criteria have been more heavily weighted. It considered the following factors to be especially important:

- A membership not associated with any other church or Denomination
- An established place of worship
- Regular religious services.

The court case states that although no one characteristic is controlling, with some being considered relatively minor, "the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are [deemed to be] of central importance." Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill [the necessary] associational role."

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), the Tax Court considered an adverse ruling by the IRS on an application for exempt status as a church. The applicant had declined to furnish some information, and made answers to other inquiries that were vague and uninformative. On the basis of the record, the Court held that the applicant had not shown that no part of its net earnings inure to the benefit of the family or that petitioner was not operated for private benefit.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990) the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the Sixth Circuit court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse and thus the need to be open and candid, which the applicant failed to do.

In Basic Unit Ministry of Alma Karl Schurig v. Commissioner, 511 F. Supp. 166 (1981), *aff'd*, 670 F.2d 1210 (1982), the Tax Court upheld IRS's denial of exempt status as a religious organization in a declaratory judgment action. The court held that in factual situations where there is evident potential for abuse of the exemption provision, a petitioner must openly disclose all facts bearing on the operation and finances of its organization. Here Plaintiff did not proffer sufficiently detailed evidence of its charitable disbursements, or the extent of its support of its members. Rather, plaintiff continually responded that it had already provided the data, or could not furnish anything further. Therefore, the court found that the applicant did not meet its burden to positively demonstrate that it qualifies for the exemption. The Court of Appeals for the District of Columbia Circuit, in affirming that the organization had not met its burden of establishing that no part of its net earnings inured to any private individual, observed:

“taxpayer confuses a criminal prosecution, in which the government carries the burden of establishing the defendant's guilt, with a suit seeking a declaratory judgment that plaintiff is entitled to tax-exempt status, in which the taxpayer, whether a church or an enterprise of another character, bears the burden of establishing that it qualifies for exemption.”

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), the Tax Court upheld the Service's determination that an organization failed to establish exemption when the organization failed to provide requested information. The court stated “[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities Such generalizations do not satisfy us that [applicant] qualifies for the exemption.”

Christian Echoes Nat. Ministry, Inc. v. U.S., 470 F.2d 849 (1972) stated that that tax exemption is a privilege, a matter of grace rather than right.

In Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958) the court stated that the applicant for tax exempt status under Section 501(c)(3) has the burden of showing it “comes squarely within the terms of the law conferring the benefit sought.”

In KJ's Fund Raisers v. Commissioner, T.C. Memo 1997-424 (1997), aff'd, 166 F.3d 1200 (2d Cir. 1998), the Tax Court held, and the Second Circuit affirmed, that an organization formed to raise funds for distribution to charitable causes did not qualify for exemption under section 501(c)(3) because its activities resulted in a substantial private benefit to its founders.

The Court of Appeals in Parker v. Commissioner, 365 F.2d 792, 799 (8th Cir. 1963) held, inter alia, the findings of Tax Court that foundation was pursuing a substantially nonexempt purpose in the publication and commercial exploitation of the writings of the director and prime functionary of foundation and that foundation was not entitled to a tax exemption as a religious organization were clearly supported by evidence.

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the Tax Court denied a petition for declaratory judgment that the organization qualified for exempt status as a church. In addition to evidence of a pattern of tax-avoidance in its operations, the court noted that the organization had failed to respond completely and candidly to IRS during administrative processing of its application for exemption. An organization may not declare what information or questions are relevant in a determination process. It cited a number of declaratory relief actions that upheld adverse rulings by the Service because of the failure of the applicants to provide full and complete information on which the Service could make an informed decision.

In Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), the Tax Court held that although separate requirements, the “private inurement” test and the “operated exclusively for exempt purposes” test often overlap substantially.

In Unitary Mission Church v. Commissioner, 74 T.C. 507 (1980), it was held that the prohibition against inurement or private benefit is absolute, the amount or extent not being determinative. Petitioner's financial decisions are controlled by X, one of petitioner's ministers, and his wife. X received widely fluctuating “parsonage allowances” over a 3-year period as compensation for

leading services and for being available for pastoral counseling. There is no evidence in the administrative record of any differing duties that he performed over these years. There is also insufficient evidence in the record regarding some of the travel expenses paid to X and his wife and regarding two loans made to X's secular employer. Parsonage allowances of fluctuating amounts were also paid in some years to petitioner's other two ministers; yet, there is no evidence in the record about any services they performed for petitioner. The Tax Court concluded that petitioner is not entitled to exemption because a part of its net earnings inures to the benefit of private shareholders or individuals.

In New Dynamics Foundation v. United States, supra, the court explains that the burden is on the applicant to establish that it meets the statutory requirement under Section 501(c)(3) of the Code.

Application of Law

You are not described in Sections 501(c)(3) of the Code and 1.501(c)(3)-1(a)(1) of the regulations because you fail the operational test.

You are not as described in section 1.501(c)(3)-1(c)(1) of the Regulations because you were set up to pay the mortgage and related expenses associated with B's home and to pay the expenses of B such as credit card and travel expenses. You indicated that you do not conduct your own worship activities.

You are not as described in section 1.501(c)(3)-1(c)(2) of the Regulations because your earnings inure to B and his family.

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) because you are operated for the benefit of designated individuals, specifically B and his family.

Further, you are similar to the organizations described in Rev. Rul. 81-94 and 78-232. Much like the organizations described in these rulings, B transferred his home and associated debt to you. B also has sole financial control. He continues to live as he did prior to the transfer of his property, but his mortgage is now paid by you. Private interests of B and his family are being served.

To qualify for exempt status an organization must make a convincing case that they qualify for tax exempt status under section 501(c)(3) of the Code. Section 501(c)(3) of the Code provides for the exemption from federal income tax for organizations if they are organized and operated exclusively for religious, charitable, and educational purposes. As was the case in New Dynamics Foundation v. United States you have not demonstrated that your operations exclusively further exempt purposes.

As required by Revenue Procedure 2010-10 you have not established that you are organized and operated exclusively for exempt purposes and not for the private benefit of its creators, designated individuals or organizations controlled by such private interests.

You are like the organization in American Guidance Foundation, supra. You have indicated that you do not conduct worship activities. Your members are a part of Congregation V, and worship

is conducted at their facilities. You do not seem to conduct any religious services of your own. Your responses to Schedule A of the application also indicate that you do not meet several of the criteria established in this case for an organization that is a church.

You are also like the organizations in Better Business Bureau of Washington DC and Basic Bible Church and Parker vs. Commissioner and KJ's Fundraisers since your operations include substantial non-exempt purposes. Specifically, your non-exempt purposes include inurement to B and his family members.

Similarly you are also like the organizations' in Basic Unit Ministry of Alma Karl Schurig, Peoples Prize v Commissioner, Christian Echoes Nat. Ministry Inc and Nelson v Commissioner because you did not respond openly and candidly to our questions. In fact, we asked the same questions multiple times and continually received little or no details regarding your operations.

An applicant for exempt status must provide sufficient information for the Service to make an informed decision, as indicated in National Association of American Churches, supra, and Bubbling Well Church of Universal Love, Inc. v. Commissioner. You must respond to questions completely and candidly. Your responses did not include details and documentation. You have given answers to our inquiries that were vague. ,

As in Harding Hospital, Inc. v. United States, supra, you have not proven that you satisfy the requirements of the Code. You have failed to provide enough information to prove to us that you are operating in a manner that would allow you to qualify for exemption under Section 501(c)(3) of the Code.

Applicant's Position

You originally stated that your purpose is to have a house of worship for prayer services and Torah study for residents of the community. You also stated that your established place of worship is located at H. You then responded to our queries stating that you have relocated the place where you hold services to G. You also provided a letter stating that your members would be joining V at G. You stated that your administrative offices were located at H. You also stated that the only expenses paid by you would be parsonage housing expenses such as the amounts listed on the mortgage bill, real estate tax bill etc. Upon being asked about the property at G you responded that it was shared with W, and that W holds the legal title to G. You stated earlier that V was the owner of the facility G. You also stated that you do not have any definitive plans to construct or acquire your own facility. You also stated that you made payments for real estate taxes on H and also mortgage payments and travel expenses for B for his duties as a Kosher Rabbinical supervisor. Later you contradicted this by stating that the credit card payment was for the mortgage payment for H. You further stated that the main use of H was to provide a residence for B and his family and that B uses the facility as a study for consultations with members of our organizations. You also stated that the agreement to transfer the property H was based on assuming the existing mortgage. Further you also stated that you do not at present, conduct your own worship activities. You provided a list of payments showing the purpose of distribution as Religious education.

Service's Response to Applicant's Position

B is the exclusive signatory of your checking account. There appears to be no oversight regarding the checks written. You have no board meeting minutes to document your decisions made since your inception. Rabbi B has written checks to cash, to individuals, and to pay his personal credit cards. These payments were made with no supporting documentation available to allow us to conclude that these payments were in furtherance of 501(c)(3) purposes.

While it may be reasonable for an organization to pay for the parsonage and related expenses of their Rabbi, it is not clear what B's duties include with respect to you. You recently admitted that you do not conduct worship activities. You also do not conduct weddings, funerals, etc. You only have 15 "congregants", none of which attend your services, but rather they attend the services of congregation V. The parsonage and related expenses assume the majority of your monthly revenue, as the mortgage amount is substantial. Rabbi B's donation of his home appears to be a vehicle by which he eliminated his own personal debt, but continued to reside in his home.

Besides the fact that in your most recent correspondence you said that you are not currently conducting worship activities, which was contradictory to everything you had provided us to that point, You do not have an established place of worship, Your members are a part of congregation V and have been accepted to participate in all prayers and studies at G which is V's facility. You have no flyers or brochures. Your activities are not separate or distinct from those of congregation V. You do not meet several of the criteria for a church as outlined in American Guidance Foundation, supra.

The transfer of the liabilities to you from B, who is also your President, causes him to receive private inurement, which is fatal to your exemption. B continues to live in the home with his family, which you now own as per Deed executed by B dated January 23 2009, subject to the existing mortgage, and your funds are being used to pay for the mortgage and all related expenses. Therefore, you are not entitled to exemption because your net earnings inure to the benefit of B, your President.

The application for tax-exempt status calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure that there is not abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the Applicant fails to meet the requirements of Section 501(c)(3). Your responses for clarifications were vague, inconsistent and contradictory.

The use by insiders of the organization's property for which the organization does not receive adequate consideration is a form of inurement and unaccounted for diversions of a charitable organization's resources by one who has complete and unfettered control can constitute inurement. Furthermore, the courts have repeatedly upheld the Service's determination that an organization has failed to establish exemption where the organization fails to provide requested information.

An organization will be denied exemption if any of its net earnings inure to the benefit of private individuals per section 1.501(c)(3)-1(c)(2) of the regulations. Even a small amount of inurement will prevent exemption to be granted. B is one of the incorporators of your organization, as well as the President. He is the sole signatory on your checking account. He has control over the

operations of your organization and has a personal interest in your activities. Thus, B is a private individual within the meaning of section 1.501(a)-1(c) of the regulations. Based upon the facts presented, you have not demonstrated that this form of compensation paid to B is reasonable; therefore, you have not established that no part of the net earnings of your organization inure to the benefit of private individuals. As a result, you do not meet the requirements for tax exemption.

Conclusion

Based on the above facts and law, we conclude that you are not organized and operated for purposes described in section 501(c)(3) of the Code. Specifically you fail the operational test because your earnings inure to the benefit of your President.

- 1) Your responses to our inquiries for additional information were vague, uninformative and contradictory. Therefore you have failed to meet your burden of demonstrating that you qualify for exemption under section 501(c)(3) of the code.
- 2) Based on of the inconsistent and contradictory information you have submitted over the course of the development of your application, we are unable to conclude that you are operating exclusively for 501(c)(3) exempt purposes. Therefore, you fail the operational test, and are disqualified from exemption under Section 501(c)(3) of the Code.
- 3) The transfer of a personal liability, as well as sole financial control by one of your officers for the benefit of that officer, constitutes prohibited inurement of income under section 501(c)(3) of the Code and causes you to be disqualified for exemption there under.

Conclusion Regarding Alternative Issue

The information you have provided about your operation of a house of worship is vague and contradictory. In addition you have stated that you do not conduct worship services, your members are part of another congregation and you do not have a place of worship. If, upon appeal, you were found to qualify for exemption, you do not meet the requirements to be classified as a church under Sections 509(a)(1) and 170(b)(1)(A)(i) as described above. Further the information submitted shows you lack the public support to pass the support test for classification as a public charity. Therefore we conclude that you are a private foundation.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of*

Attorney and Declaration of Representative, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations, Group 7830
Room 4-504
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations, Group 7830
550 Main Street, Room 4-504
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements